



June 25, 2002

Mr. Todd Baxter
Winstead, Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701

OR2002-3444

Dear Mr. Baxter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164848.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for all available information regarding a specified employee. You state that the district will release portions of the responsive information. However, you claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the information contained in Exhibit B constitutes medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). You state that the first document in Exhibit B was created by or under the supervision of the Medical Review Officer, a doctor, during the administration of a drug test. We find that this document is a medical record and is therefore subject to the MPA. This information may be released only in accordance with the MPA. However, we do not find that the remaining document in Exhibit B constitutes a medical record governed by the MPA.

In regard to the submitted information in Exhibit C, you claim section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home address, telephone number, social security number, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The commission must withhold this type of information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to the commission's receipt of the current records request.

In Exhibit C, you have submitted the applicable employee election form. The employee has elected to not allow public access to her home address and telephone number in accordance with the procedures of section 552.024 of the Government Code and prior to the district's receipt of the present request. Therefore, the district must withhold the employee's home address and telephone number pursuant to section 552.117 of the Government Code.

In Exhibit E, you have also submitted to this office an additional request from the employee in question to maintain the confidentiality of her social security number and family member information. This request, however, is dated April 22, 2002. The current request for

information was received by the district on April 10, 2002. The employee's section 552.024 request that her social security number and family member information be kept confidential was made after the district's receipt of the request for information and, therefore, the district may not withhold the social security number under section 552.117.

We note, however, that the employee's social security number may nevertheless be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the responsive information is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the district should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Form W-4, the Employee's Withholding Allowance Certificate, is confidential as tax return information under title 26, section 6103(a) of the United States Code and must not be released. Open Records Decision No. 600 at 8-9 (1992). We have marked Form W-4 in Exhibit C.

We further note that Exhibit C includes an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.130 of the Government Code excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the district must withhold the Texas driver's license information we have marked in Exhibit C pursuant to section 552.130 of the Government Code.

Finally, we note that Exhibit C contains an e-mail address obtained from the public that is excepted from public disclosure. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Accordingly, as there is no indication that there has been consent to any release, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary, we conclude that: 1) the document we have marked in Exhibit B is a medical record and may be released only in accordance with the MPA; 2) the district must withhold the employee's home address and telephone number pursuant to section 552.117 of the Government Code; 3) the social security number may be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act; 4) Form W-4, the Employee's Withholding Allowance Certificate, in Exhibit C is confidential as tax return information under title 26, section 6103(a) of the United States Code and must not be released; 5) Form I-9, the Employment Eligibility Verification, in Exhibit C is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system; 6) the district must withhold the Texas driver's license information we have marked in Exhibit C pursuant to section 552.130 of the Government Code; and 7) the district must withhold the e-mail address we have marked under section 552.137 of the Government Code. All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 164848

Enc: Submitted documents

c: Mr. John C. McLemore
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(w/o enclosures)